

EXHIBIT A

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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK-----x
SECURITIES INVESTOR PROTECTION
CORPORATION,Plaintiff-Applicant, Adv. Pro. No.
08-01789 (SMB)

v.

BERNARD L. MADOFF INVESTMENT
SECURITIES LLC,
Defendant.-----x
In Re:BERNARD L. MADOFF,
Debtor.-----x
IRVING H. PICARD, Trustee for
the Substantively Consolidated
SIPA Liquidation of Bernard L. Madoff
Investment Securities LLC and Bernard L. Madoff,
Adv. Pro. No. 10-04362 (SMB)

Plaintiff,

v.

SAGE ASSOCIATES;

LILLIAN M. SAGE, IN HER CAPACITY
AS PARTNER OR JOINT VENTURER OF
SAGE ASSOCIATES AND INDIVIDUALLY
AS BENEFICIARY OF SAGE ASSOCIATES;

Deposition of:

MALCOLM SAGE

November 15, 2017

Picard v Sage Associates-Realty

Malcolm Sage 11/15/2017

8 (Pages 26 to 29)

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<p>1 decision, but my mother was an investor, and I 2 can't recall if she made suggestions, but she 3 probably came to meetings with Mr. Madoff. 4 Q. And when you say it was an equal 5 decision between you, your brother and your 6 sister, did either one of them, to your 7 recollection, express any preference for any 8 other broker?</p> <p>9 MR. KRATENSTEIN: He said a joint 10 decision but go ahead, answer the question. 11 A. Well, we did invest some monies 12 with Ms. Evans -- Ms. Lattimer at Evans & 13 Company. 14 Q. How did you communicate with 15 Mr. Madoff once you had invested? 16 MR. KRATENSTEIN: We're now after 17 investment? 18 MS. KERANEN: Yes. 19 A. We would meet with him, and we 20 would call him on the telephone. 21 Q. How often would you meet with him? 22 A. At what period of the year are you 23 asking? 24 Q. Let's say -- you started investing 25 in 1979. Let's say from 1979 to 1981, how often</p>	<p>1 A. I would say not. 2 Q. So, just to restate it, so you're 3 saying from 1979 to let's say 1990 you would 4 meet with him a couple of times a year at his 5 offices? 6 A. Correct. 7 Q. Who besides you would attend those 8 meetings? 9 A. In general it would be my brother, 10 my sister and myself. Sometimes my mother. 11 Q. Was there any particular reason 12 that your mother would attend some meetings and 13 not others? 14 A. She was an investor as well. Oh, 15 why might she not come at times? 16 Q. Right. 17 A. My mother did things her way. I 18 can't speak for my mother. 19 Q. You also mentioned that you had 20 calls with Mr. Madoff. Do you recall, let's say 21 in the same time period, 1979 to 1981, how many 22 times you would call him? 23 MR. KRATENSTEIN: I'm sorry, I 24 just want to be clear because you swapped time 25 periods. You're now '79 to '81?</p>
<p>1 would you meet with him? 2 A. Probably a couple times a year. 3 Q. Where would you meet? 4 A. Always at his office. 5 Q. How long would those meetings 6 last? 7 A. Wow, that's hard to say. They 8 weren't short. 9 Q. When you say they weren't short, 10 can you ballpark that for me? 11 A. They were -- we had discussions. 12 There was give and take. I really can't say. 13 If I said -- if I said they lasted an hour, it 14 really would be based on what makes sense to me 15 now and not -- you know, not necessarily -- 16 Q. Not a reflection of -- 17 A. -- being accurate -- 18 Q. -- at that time? 19 A. No. You want to say one thing, 20 but you're not sure. 21 Q. So from 1981, did you continue to 22 meet with him through the '80s? 23 A. We met with him regularly. 24 Q. And did the frequency of your 25 meetings change in the '80s at any point?</p>	<p>1 MS. KERANEN: Um-hum. 2 MR. KRATENSTEIN: Okay. And 3 you're assuming that Mr. -- hang on. You're 4 assuming Mr. Sage made the call? Are you really 5 asking about calls initiated by either party? 6 MS. KERANEN: I'm asking, first of 7 all, calls he participated in with Mr. Madoff 8 that he initiated. 9 MR. KRATENSTEIN: That Mr. Sage 10 initiated? 11 MS. KERANEN: And then I was going 12 to ask about any calls that BLMIS made to the 13 Sages. 14 MR. KRATENSTEIN: Well -- and Just 15 one -- as you know, BLMIS did not come into 16 existence until I think 2001. So if we're in 17 the 1979 to 1981 time frame, I think you're 18 really talking about calls that Mr. Madoff 19 initiated. I think that would be more precise. 20 But why don't you ask your question and he'll 21 answer. 22 MS. KERANEN: Sure. 23 BY MS. KERANEN: 24 Q. So you testified that you both met 25 with Mr. Madoff and that you had calls with him.</p>

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<p>1 From the 1979 to 1981 period, about how many 2 times would you call Mr. Madoff per year? 3 A. As much as I'd like to answer that 4 question, I really can't recall that. I can't 5 recall how many times I called anybody, you 6 know. Maybe I can't recall when I called him 7 last year, but I certainly recall -- I can't 8 recall what I did 30 years ago in terms of phone 9 calls made. Easier to recall meetings.</p> <p>10 Q. So would you say you didn't have a 11 regular pattern of calling him?</p> <p>12 A. I would say that that's correct.</p> <p>13 Q. Did he ever initiate calls to you?</p> <p>14 A. To my recollection, yes.</p> <p>15 Q. And do you recall what the 16 circumstances were of those calls?</p> <p>17 MR. KRATENSTEIN: Let me just 18 interject. Sorry, I just need a clarification. 19 Now this is at any time; not limited to '79 --</p> <p>20 MS. KERANEN: No, we're still in 21 the '79 to '81 time period.</p> <p>22 MR. KRATENSTEIN: Okay.</p> <p>23 A. Oh, we're limited to that period? 24 It's pretty much a haze to me, to be honest.</p> <p>25 Q. When the calls that you originated</p>	<p>1 during that '79 to '81 period. 2 Q. And during that period, did you 3 actively monitor your investments with 4 Mr. Madoff? 5 A. I did. 6 Q. And what did that monitoring 7 consist of? 8 A. Reviewing the statements and the 9 confirms. 10 Q. And when you say confirms, what 11 kind of confirms were those? 12 A. Confirms on the convertible 13 arbitrage trades. 14 Q. And were those confirmations 15 coming from BLMIS or Mr. Madoff or were they 16 coming from a third party? 17 MR. KRATENSTEIN: I'll just object 18 to the use of BLMIS in this time period. You 19 can answer the question. 20 I think we all know BLMIS didn't 21 exist in this time period, so I think -- I think 22 the question is geared towards Mr. Madoff, and 23 you can correct me if I'm wrong, or Madoff's 24 firm at that time. 25 A. They came from Madoff.</p>
<p>1 to Mr. Madoff occurred in 1979 to 1981, was 2 there anyone else participating in those calls? 3 A. No. 4 Q. To your knowledge in the 1979 to 5 1991 call -- time period when Mr. Madoff would 6 call you, was there anyone else participating in 7 those calls? 8 A. No. The problem I'm having with 9 your questions is that when you restrict it to a 10 certain period of time, it's just hard for me to 11 remember one short time frame 30 years ago or 40 12 years ago to a short time frame 38 years -- it's 13 just complicated. 14 Q. That's fair. What I'd like to do 15 would be to talk to you about individual time 16 periods and then your general recollection so we 17 can try and be as specific as possible in the 18 transcript. 19 A. I probably did not talk to him as 20 much during the '79 to '81 or '82 period as I 21 did thereafter. I was in law school, I was 22 taking a Bar exam. I was starting my career. 23 We were invested in convertible arbitrage. I 24 probably had less interaction with him, now 25 that, you know, I think about it, at that --</p>	<p>1 Q. So -- and let's just tie this up 2 in the '79 to '81 time period. Do you know if 3 your siblings spoke with Mr. Madoff on the 4 phone? 5 A. I wouldn't know that. I wouldn't 6 think they did. 7 MR. KRATENSTEIN: Don't speculate. 8 THE WITNESS: Yeah. 9 MR. KRATENSTEIN: If you don't 10 know, you don't know. 11 A. I don't know. 12 Q. Let's turn to the 1980s. Can you 13 tell me about your phone calls with Mr. Madoff 14 during that period? 15 A. A lot changed in 1982. I had a 16 greater involvement with Madoff after '82, so as 17 it comes back to me now when you talked about 18 the '79 to '81 period when we were involved in 19 convertible arbitrage, the contact was probably 20 less. It probably increased after that. 21 Q. And why is that? 22 A. As -- after we sold my father's 23 business and could focus more on our portfolio 24 of stocks, my sister had children, my brother is 25 getting married, I met my wife. Our lives were</p>

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<p>1 changing. There were things that needed to be 2 addressed, a future that needed to be thought 3 of.</p> <p>4 We were involved in the 5 convertible arbitrage trading with Madoff. At 6 Evans & Company we owned a portfolio of stocks. 7 We saw the market as being strong. We spoke to 8 Madoff about the market.</p> <p>9 It was our idea, given our ages, 10 given where we were at the point in our lives 11 and careers that we wanted to build a nest egg, 12 develop a portfolio that would address our 13 future needs, whether it be in terms of 14 retirement, whether it be in terms of medical 15 needs, whether it be in terms of education for 16 our children. We decided that we thought it was 17 in our interest at that point, in that stage of 18 our lives, to build a portfolio of stocks to 19 move away from the convertible arbitrage.</p> <p>20 We met with -- we met with Madoff, 21 and we instructed him to do that, and he 22 followed our directions.</p> <p>23 Q. So just to make sure I understand, 24 your testimony is that in 1982, you and your 25 siblings met with Mr. Madoff and instructed him</p>	<p>1 portfolio of stocks in the Sage -- in the 2 Maurice Sage Trust account, as well as the Sage 3 Associates account.</p> <p>4 Does that clarify it for you?</p> <p>5 Q. Yes, thank you.</p> <p>6 So in 1982 your testimony is that 7 you had two accounts, the Maurice Sage Trust and 8 the Sage Associates account. The Maurice Sage 9 Trust account, when was that opened?</p> <p>10 A. It was a testamentary trust that 11 was established pursuant to my dad's will. It 12 was probably opened sometime in the late '70s.</p> <p>13 Q. And when was the Sage Associates 14 account opened, if you recall?</p> <p>15 A. Probably right at around the same 16 time.</p> <p>17 Q. So starting in 1982 your testimony 18 is that you became more involved with actively 19 managing your portfolios with Mr. Madoff; is 20 that correct?</p> <p>21 A. That's correct.</p> <p>22 Q. So tell me about the frequency of 23 your meetings with him from 1982 through 1990.</p> <p>24 A. I don't think that the frequency 25 of our meetings changed significantly during</p>
<p>1 to move away from the convertible arbitrage 2 strategy and towards building a portfolio of 3 stocks?</p> <p>4 A. That is mostly correct.</p> <p>5 Q. What did I get wrong?</p> <p>6 A. What you got wrong is that I 7 didn't fill in a blank for you. We had separate 8 accounts with Madoff. We had a Sage Associates 9 account at that time.</p> <p>10 Q. This is in 1982?</p> <p>11 A. In 1982. And we had a Maurice 12 Sage Trust account. We decided that in the 13 trust account we would maintain half of our 14 assets in convertible arbitrage, and the other 15 half of our assets we would purchase 16 securities -- if I recall they were Dupont and 17 General Motors -- and write covered calls 18 against them. That is what we did in the 19 Maurice Sage Trust account.</p> <p>20 In the Sage Associates account, 21 we, I believe it was in mid-1982, we purchased 22 simply a portfolio of stock. At some later 23 point, shortly later, we decided to move away 24 from the covered calls writing and entirely away 25 from convertible arbitrage and establish a</p>	<p>1 that time period. I'm not sure that the 2 frequency for our meetings ever really changed 3 significantly.</p> <p>4 Q. So just so I understand, you're 5 saying from the time once you opened investments 6 with Mr. Madoff in the late '70s, around 1979, 7 through the dissolution of BLMIS, you continued 8 to meet with Mr. Madoff several times a year?</p> <p>9 A. Correct.</p> <p>10 MR. KRATENSTEIN: I think he said 11 a couple times a year.</p> <p>12 Q. Couple times a year. So would 13 that be two or less or more than two?</p> <p>14 A. Probably two, two probably.</p> <p>15 Q. Twice a year?</p> <p>16 A. It's a good ballpark figure.</p> <p>17 Q. Was there a pattern? Like did you 18 meet every spring and fall?</p> <p>19 A. There may have been, but I 20 wouldn't recall that. I don't believe it, but 21 it's possible.</p> <p>22 Q. Do you remember when your last 23 meeting at -- with Mr. Madoff was?</p> <p>24 A. Physical meeting at his office?</p> <p>25 Q. Yes.</p>

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<p>1 A. I would --</p> <p>2 MR. KRATENSTEIN: Don't guess.</p> <p>3 A. Yeah.</p> <p>4 MR. KRATENSTEIN: Give your best</p> <p>5 recollection, but don't guess. If you can give</p> <p>6 a recollection, give a recollection. But if you</p> <p>7 have to guess, that's speculating.</p> <p>8 A. My best recollection is that it</p> <p>9 was in 2008.</p> <p>10 Q. And do you remember what time of</p> <p>11 year it was?</p> <p>12 A. It would not have been later in</p> <p>13 the year.</p> <p>14 Q. Why is that?</p> <p>15 A. That's just my recollection</p> <p>16 because of -- given what happened in December of</p> <p>17 that year, my recollection is I hadn't met with</p> <p>18 him in the immediate prior months. It was</p> <p>19 probably earlier in the year.</p> <p>20 Q. So you would say sometime before</p> <p>21 June 2008?</p> <p>22 A. I think that's fair to say, but</p> <p>23 I'm not certain.</p> <p>24 Q. Do you happen to recall what you</p> <p>25 discussed at that meeting?</p>	<p>1 I think we made it there.</p> <p>2 In addition, the market was high.</p> <p>3 Our stocks were predominantly long term. We</p> <p>4 thought it was a good time to sell. So we made</p> <p>5 that decision.</p> <p>6 We also were starting to struggle</p> <p>7 between ourselves in the sense that -- we had</p> <p>8 this tenancy in common, and as part of that</p> <p>9 tenancy in common, we had to maintain equal</p> <p>10 shares because -- in a stock portfolio, because</p> <p>11 if we had unequal shares, how could one state</p> <p>12 what one owned of one stock versus another?</p> <p>13 Q. Let me stop you right there for</p> <p>14 just a second. When you say you had to maintain</p> <p>15 equal shares, are you talking about equal shares</p> <p>16 amongst the three of you, like you each had to</p> <p>17 hold a third or --</p> <p>18 A. That is correct.</p> <p>19 Q. Okay. But you didn't have to</p> <p>20 maintain equal shares of the actual stocks you</p> <p>21 were buying?</p> <p>22 A. Correct, we did not have to</p> <p>23 maintain equal shares of that. That had nothing</p> <p>24 to do with it.</p> <p>25 Q. All right. Please continue.</p>
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<p>1 A. No, I don't.</p> <p>2 Q. Do you happen to recall how long</p> <p>3 the meeting was?</p> <p>4 A. My recollection is that in 2008 we</p> <p>5 met with him -- actually, I think it was only I</p> <p>6 met with him, and that the meeting was about</p> <p>7 what we would do going forward with our</p> <p>8 accounts. We had made a significant change in</p> <p>9 early 2007, and we were indecisive in 2008 about</p> <p>10 what we wanted to do. So I met with him and I</p> <p>11 don't think we made any decisions.</p> <p>12 Q. When you say you made a</p> <p>13 significant change in your accounts in early</p> <p>14 2007, can you tell me about them?</p> <p>15 A. In January of 2007 -- and it's</p> <p>16 possible that it happened in December of 2006 --</p> <p>17 we instructed Madoff to sell all the</p> <p>18 portfolio of stocks that we held. That was a</p> <p>19 big decision for us.</p> <p>20 Q. Why did you make that decision?</p> <p>21 A. I think we had reached our</p> <p>22 objectives in terms of goals we had set back in</p> <p>23 the early '80s. We were looking -- we had</p> <p>24 looked to establish a portfolio that would be</p> <p>25 long term, that would produce a solid nest egg.</p>	<p>1 A. So, we were in a situation where</p> <p>2 we had now reached different stages in our</p> <p>3 lives, and we couldn't all -- it wasn't easy.</p> <p>4 If my brother wanted to withdraw money or my</p> <p>5 sister wanted to withdraw money or if I wanted</p> <p>6 to withdraw money, we all had to withdraw the</p> <p>7 same amount of money. And if we wanted to add</p> <p>8 money, we would all have to add the same amount</p> <p>9 of money. It was unwieldy.</p> <p>10 It was -- it was foreseeable that</p> <p>11 it would become harder to reach a consensus, and</p> <p>12 it made sense, in that sense, to no longer own a</p> <p>13 shared portfolio of stocks in a tenancy in</p> <p>14 common.</p> <p>15 Q. So in December of 2006 or early</p> <p>16 2007, you instructed Mr. Madoff to sell all the</p> <p>17 stocks in your portfolio?</p> <p>18 A. That is correct.</p> <p>19 Q. What did you do with the money?</p> <p>20 A. The monies remained at Madoff.</p> <p>21 Q. And that is across all of your</p> <p>22 accounts that you had stocks in; you instructed</p> <p>23 him to sell all of them?</p> <p>24 A. Are you asking me if we withdrew</p> <p>25 money after we instructed --</p>

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<p>1 Q. Not yet. We'll get there. 2 A. Okay. 3 Q. I'm just saying, when you told 4 him, Mr. Madoff, please sell all the stocks, was 5 that instruction across all of your open 6 accounts -- 7 A. No. 8 Q. -- or was that limited -- okay. 9 Which accounts did you instruct him to sell all 10 your stocks in? 11 A. We instructed him to sell the 12 stocks in the three accounts where we had -- 13 which I referred to as stock accounts. 14 MR. KRATENSTEIN: Do you want him 15 to name those accounts? 16 MS. KERANEN: Yes, please. 17 A. That would be Sage Associates, 18 Sage Associates II, which was the successor 19 entity to the Maurice Sage Trust which I 20 mentioned earlier, and the Maurice S. Sage 21 Foundation, Inc. 22 Q. To your knowledge, at this time 23 period in late 2006 or early 2007, did you have 24 stock in any other of your accounts at Madoff? 25 A. A portfolio of stocks, as opposed</p>	<p>1 couldn't state with any certainty. 2 Q. Did the subject of those meetings 3 change? For instance, did you make any 4 different investment choices that you discussed 5 with Mr. Madoff? 6 MR. KRATENSTEIN: As compared to 7 the earlier meetings in the prior decade? 8 MS. KERANEN: Right. 9 A. Now we're talking between 1990 and 10 2000? 11 Q. Right. For example, you testified 12 that you made a major shift in your investment 13 strategy in 1982. Were there any other sorts of 14 investment shifts like that in the 1990s? 15 A. In 1995 to protect our long-term 16 positions, we instructed Madoff to sell our 17 shares short against the box, based on a 18 recommendation he made to protect those -- 19 protect those gains. 20 Q. And you followed Mr. Madoff's 21 instruction? 22 MR. KRATENSTEIN: Objection. 23 A. No, he didn't make any -- 24 MR. KRATENSTEIN: Hang on, hang 25 on.</p>
<p>1 to being involved in other type -- forms of 2 investments. 3 Q. Right, a portfolio of stocks? 4 A. Those were the only accounts where 5 we had a portfolio of stocks. Yes, those were 6 the only accounts. 7 Q. Let's take a step back and go back 8 to your meetings with Mr. Madoff in the 1990 to 9 2000 period. 10 A. Okay. 11 Q. Did the frequency or length of 12 those -- did the frequency of those meetings 13 change at all from your meetings in the '80s? 14 A. It would be impossible to state -- 15 the frequency didn't change, I would say. Did 16 you ask about the length too? 17 Q. That was going to be my next 18 question. 19 A. I thought you had already said 20 that. 21 Q. I was going to say it. You're 22 anticipating me. 23 Did the length of those meetings 24 change at all? 25 A. That's something I couldn't -- I</p>	<p>1 MS. KERANEN: I'm sorry. 2 MR. KRATENSTEIN: Slow. Object to 3 form. 4 Q. And you followed Mr. Madoff's 5 recommendation to sell short against the box? 6 A. We thought about it. We 7 understood why he was making the suggestion. We 8 thought it was a good idea, and we instructed 9 him to do that. 10 Q. How long did that strategy stay in 11 place? 12 A. It wasn't so much a strategy as a 13 form, one way of dealing with our investments. 14 Periodically over the next decade, we were short 15 against the box, or brought back into the shorts 16 against the box. 17 Q. So you said next decade. So are 18 you capping that at 2005? 19 A. I would cap that at when we sold 20 the stock. 2007. 21 Q. So late 2006, early 2007? 22 A. Correct. 23 Q. And let's talk about your calls 24 with Mr. Madoff during the 1990s to 2000 period. 25 Did you have phone calls that you originated to</p>

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<p>1 Q. Do you understand what no balance 2 forward means in this context?</p> <p>3 A. My understanding is that this was 4 a new account, a new Sage Associates account 5 that was created.</p> <p>6 Q. And do you know why this account 7 was created in April 2008?</p> <p>8 A. We made a decision in 2006 to 9 early 2007, at some point we informed Madoff and 10 directed him that we wanted to sell our entire 11 portfolio of stock.</p> <p>12 At that point we were discussing 13 transitioning the account to the basket 14 arbitrage.</p> <p>15 Q. Let me stop you there just to make 16 sure I understand correctly. At this point in 17 late 2006, early 2007, you had decided to sell 18 out your stock portfolio and switch to 19 Mr. Madoff's split-strike strategy?</p> <p>20 A. We hadn't made -- we had made the 21 decision to sell out our stock positions but we 22 had not yet made the decision to transition to 23 basket arbitrage, split-strike as you call it.</p> <p>24 Q. What were you doing with the funds 25 in the meantime?</p>	<p>1 A. That is correct.</p> <p>2 Q. And you directed Mr. Madoff to 3 sell your positions --</p> <p>4 A. That is correct.</p> <p>5 Q. -- or otherwise close out your 6 positions and stock --</p> <p>7 A. That is correct.</p> <p>8 Q. And then later in 2007 you 9 contemplated reopening your stock positions?</p> <p>10 A. No. In 2007 after we sold our 11 positions, we had made a decision to continue 12 with stock accounts and not -- not make the 13 transition.</p> <p>14 The thinking for months had been 15 that we would make the transition to basket 16 arbitrage, and ultimately we decided in 2007 not 17 to do that.</p> <p>18 Q. Okay. So in 2007 after you had 19 directed Mr. Madoff to close out your stock 20 positions, what did you do with the money? Did 21 you buy back into any stocks?</p> <p>22 A. We did.</p> <p>23 Q. Do you recall which stocks you 24 selected?</p> <p>25 A. One stock I recall is Priceline.</p>
<p style="text-align: center;">Page 219</p> <p>1 A. The funds in the account?</p> <p>2 Q. Correct.</p> <p>3 A. Well, while we were -- in 2007 we 4 ultimately decided to try to establish a new 5 portfolio and to go forward again with a 6 portfolio of stocks and not go into the basket 7 arbitrage. It was a decision that we were 8 uncertain about, and by 2008 we had made a 9 decision to move out of the stock account, 10 traded stock accounts.</p> <p>11 And so I believe I see a 12 withdrawal here for \$10 million. I believe we 13 withdrew the money in early April to pay our 14 federal taxes, which were significant, and the 15 money was, while we were deciding exactly what 16 to do, we decided to put the money into Treasury 17 bills. That's what we directed Madoff to do, 18 was to buy Treasury bills while we awaited a 19 final decision as to what we were going to do.</p> <p>20 Q. Okay. Let me make sure I 21 understand your testimony correctly.</p> <p>22 You decided in conjunction with 23 your sister and your brother in late 2006 or 24 2007 to close out of your stock portfolios in 25 the Sage Associates accounts?</p>	<p style="text-align: center;">Page 221</p> <p>1 Another stock I recall was Medco. But what we 2 did -- as opposed to what we did back in '85, we 3 didn't at that point buy an entirely new 4 portfolio of stocks.</p> <p>5 Q. Do you remember how many stocks 6 you did purchase?</p> <p>7 A. Those are the two that I recall. 8 If you showed me the statement, it might refresh 9 my memory.</p> <p>10 Q. And do -- do you recall when you 11 had closed out of the positions?</p> <p>12 MR. KRATENSTEIN: Which positions?</p> <p>13 Q. The -- when you made a decision 14 and directed Mr. Madoff to close out all of your 15 stock portfolios, do you know when that was 16 completed?</p> <p>17 A. That would have been completed in 18 January of 2007.</p> <p>19 Q. And do you know when you directed 20 Mr. Madoff to buy stocks again for you?</p> <p>21 A. It would have been shortly 22 thereafter or right around that time.</p> <p>23 Q. So shortly thereafter would have 24 been what time period of the year?</p> <p>25 A. I'd have to look at the statements</p>

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<p>1 to refresh my memory, but my recollection is 2 early in 2007, shortly after we sold out our 3 entire portfolio.</p> <p>4 Q. So you would expect your 5 statements from 2007 to reflect the closing out 6 of all your positions and then the next month 7 later all new stock purchases?</p> <p>8 A. I know that they would have 9 reflected the termination of all our positions 10 and shortly thereafter the establishment of some 11 new positions, yes.</p> <p>12 MR. KRATENSTEIN: Is there 13 anything he can move away?</p> <p>14 MS. KERANEN: You can move both of 15 those away for now.</p> <p>16 I'm handing the court reporter a 17 document to be marked as Exhibit 16. 18 (Exhibit Trustee-16 marked for 19 identification.)</p> <p>20 MS. KERANEN: I'll read the Bates 21 number into the record. MDPTPP05047503 through 22 05.</p> <p>23 Q. Mr. Sage, do you recognize this 24 document?</p> <p>25 A. I do.</p>	<p>1 Q. What's that number there? 2 A. Those would be the dividends paid 3 on the Walt Disney Company. 4 Q. And that's in the amount of a 5 \$131,502?</p> <p>6 A. That is correct. 7 Q. So this statement is from January 8 2007 and reflects that your account, Sage 9 Associates, is still holding Walt Disney Company 10 stock, correct? 11 A. At what point? What are you 12 suggesting? 13 Q. At the date, January 31st, 2007 14 this shows that your account is long \$24 million 15 worth of stock? 16 A. It does show that. 17 Q. Okay. And it shows that you 18 received a dividend -- 19 A. I'm going to correct a slight 20 error. 21 Q. Sure. 22 A. I instructed Madoff to sell all 23 our long-term positions at the end of 2006 and 24 the early 2007. 25 Q. And what are your --</p>
<p>1 Q. And what is this document? 2 A. This document is Sage Associates 3 January 31st, 2007 statement.</p> <p>4 MR. KRATENSTEIN: You have the 5 same caveat, I take it, as the prior statements 6 about the -- this is not in the form in which 7 you've received it.</p> <p>8 THE WITNESS: It is not in the 9 form I received it.</p> <p>10 Q. Can you look at the second page of 11 this document, please.</p> <p>12 A. Yes, I'm looking at the second 13 page of the document.</p> <p>14 Q. Do you see where it says, "Market 15 value of securities" --</p> <p>16 A. I do.</p> <p>17 Q. -- "long and short"?</p> <p>18 A. I do.</p> <p>19 Q. What's the number under "long"?</p> <p>20 A. \$24,106,000.</p> <p>21 Q. And I think it's 24,106,498?</p> <p>22 A. That is correct.</p> <p>23 Q. And the third page, do you see 24 where it says dividends?</p> <p>25 A. I do see that.</p>	<p>1 A. That would have included Disney 2 and eBay. 3 Q. Okay. So your testimony is that 4 Walt Disney and eBay were your long-term 5 positions and you instructed Mr. Madoff to sell 6 both of those? 7 A. That is correct. 8 Q. Did you instruct Mr. Madoff to 9 sell any of your other stocks? 10 A. No, we did not. 11 Q. So in -- at the end of January 12 2007, it still shows that you are long 13 positions; is that correct? 14 A. That is correct. 15 Q. And that you received dividends 16 from the Walt Disney Company? 17 A. That is correct. If you look at 18 the statement, I guess the ex-dividend date was 19 12/15/2006, so even though we sold out the 20 position in 2007, we still had earned a dividend 21 and it was payable on 1/12 of 2007. 22 Q. And can you look at Fidelity 23 Spartan? 24 A. I can. 25 Q. What was that entity?</p>

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<p>1 A. My understanding was that that was 2 a money market account. 3 Q. Okay. Then you see security 4 positions below that? 5 A. Yes, I do. 6 Q. Apple, Inc., CarMax, Inc. and 7 General Motors Corp.? 8 A. I do see that. 9 Q. What was your position with these 10 three stocks? 11 A. We were long Apple 65,000 shares, 12 long CarMax 50,000 shares, long General Motors 13 125,000 shares, and we had \$15,458 in a money 14 market fund. And we had a Treasury bill with a 15 face value of \$11,725,000 due 5/24/2007. 16 Q. And you were not intending to sell 17 those stocks? 18 A. No, we were not intending to sell 19 those stocks. I erred earlier in saying that we 20 instructed Madoff to sell our entire portfolio. 21 What I meant to say was that I instructed Madoff 22 to sell the long-term stocks. I would have 23 called him on the telephone, and I would have 24 sent him a letter to that effect. 25 Q. And these are the only two</p>	<p>1 account? 2 A. The 7 account showed the short 3 against the box positions. 4 Q. And what was the purpose of the 8 5 account? 6 A. The 8 account showed naked short 7 positions. 8 Q. You said at various times there 9 was an 8 account. Why at various times? 10 A. Madoff -- at all times the buck 11 stopped with me. I directed Madoff in terms of 12 trading. Madoff operated in -- within limited 13 discretion. There were guardrails that he 14 understood in terms of our strategy. 15 There came a time where Madoff 16 engaged in trading naked shorts. I was 17 uncomfortable with it. I thought about it. He 18 did it a second time. I instructed him not to 19 do it again, and he did not do it again. So 20 there were only -- I believe that only happened 21 on two occasions. 22 Q. Okay, I'm not sure I quite 23 followed you. Are you saying the 8 account was 24 opened on two occasions or that -- 25 A. I don't know that you would --</p>
<p>1 long-term stocks? 2 A. In this account. 3 MR. KRATENSTEIN: By these two, 4 you mean Walt Disney and eBay? 5 MS. KERANEN: Walt Disney and 6 eBay. 7 MR. KRATENSTEIN: Correct, 8 Mr. Sage? 9 THE WITNESS: That is correct. 10 Q. Do you see towards the top where 11 the account number is listed as 1-S0004-3-0? 12 A. I do. 13 Q. Do you recognize that as being one 14 of the sub-accounts of Sage Associates? 15 A. I do. 16 Q. How many sub-accounts for Sage 17 Associates were there? 18 A. There was a sub 3 account, a sub 7 19 account and at various times a sub 8 account. 20 Q. What was the purpose of the sub 3 21 account? 22 A. I assume those were the inter -- 23 what was the purpose? The 3 account showed the 24 long -- the long positions. 25 Q. And what was the purpose of the 7</p>	<p>1 that's how you would articulate it in terms of 2 open. How the accounts were set up in terms of 3 numerical sequencing was, you know, was an 4 internal Madoff decision. We didn't have 5 anything to do with determining how his accounts 6 were divided. 7 Q. So you're saying more that when 8 the transactions in the 08 accounts, or the 8 9 accounts, were engaged in, to your knowledge 10 they were only engaged in twice? 11 A. That is my recollection. 12 Q. Let's take a step back and just 13 run through some housekeeping on Sage 14 Associates. 15 A. Sure. 16 MR. KRATENSTEIN: Are you done 17 with this document? 18 MS. KERANEN: Yes. 19 I'm handing the court reporter a 20 document to be marked as Exhibit 17. 21 (Exhibit Trustee-17 marked for 22 identification.) 23 Q. Mr. Sage, do you recognize this 24 document? 25 A. I do recognize this document.</p>

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<p>1 Q. What is this document? 2 A. This is a response by Sage 3 Associates to the Trustee's first set of 4 interrogatories. 5 Q. Do you know who drafted this 6 document? 7 A. This document would have been 8 drafted by my attorney. 9 Q. And can you turn to the last two 10 pages of the document. 11 A. I can. 12 Q. Do you see the verification on the 13 very last page? 14 A. I do. 15 Q. Is that your signature? 16 A. That is my signature. 17 Q. Did you review the responses to 18 the Trustee's first set of interrogatories 19 before they were submitted? 20 A. I did. 21 Q. And what did you do to ensure they 22 were true and correct? 23 A. I would have reviewed the answer 24 to each question after preparing them. I would 25 have checked with whatever relevant</p>	<p>1 Trustee's first set of interrogatories to myself 2 in the Sage Associates account, in the lawsuit 3 against Sage Associates. 4 Q. Can you turn to the last page, the 5 verification. 6 A. I can. 7 Q. Is that your signature? 8 A. That is my signature. 9 Q. Did you review the responses 10 before they were submitted? 11 A. I did. 12 Q. And what did you do to review them 13 to make sure the information was true and 14 correct? 15 A. I would have reviewed the 16 pertinent Madoff statements; I would have 17 reviewed the pertinent tax returns; and I would 18 have reviewed the pertinent bank statements. 19 Q. And did you speak with anybody, 20 aside from counsel about the information 21 contained herein? 22 A. No, I did not. 23 Q. So I believe we previously 24 discussed that Sage Associates was formed in 25 1980. Did you file any paperwork to form Sage</p>
<p>1 documentation needed to be checked with, and I 2 would have then signed the document. 3 Q. What did you check, what relevant 4 information did you check in order to 5 substantiate your responses? 6 A. I would have checked the Madoff 7 statements. I would have checked the tax 8 returns, and I would have checked I believe the 9 bank statements, yes. And the bank statements. 10 Q. And did you speak with anybody 11 about the submission before it was submitted? 12 MR. KRATENSTEIN: Other than 13 counsel? 14 MS. KERANEN: Other than counsel. 15 A. No. 16 Q. You can set that aside for now. 17 MS. KERANEN: I'm handing the 18 court reporter a document to be marked as 19 Exhibit 18. 20 (Exhibit Trustee-18 marked for 21 identification.) 22 Q. Do you recognize this document? 23 A. I do recognize this document. 24 Q. And what is this document? 25 A. This document is a response to the</p>	<p>1 Associates? 2 A. The only thing we would have done 3 was request a taxpayer ID number. 4 Q. Did your mother have any role with 5 Sage Associates? 6 A. No. 7 Q. And was Sage Associates ever 8 dissolved? 9 A. Formally? 10 Q. Formally. 11 A. No. 12 Q. Did you ever discuss with 13 Mr. Madoff the creation of Sage Associates? 14 A. No. 15 Q. Did you ever discuss with anyone 16 at Mr. Madoff's firm the creation of Sage 17 Associates? 18 A. No. 19 Q. How did you decide to create Sage 20 Associates? 21 A. When -- subsequent to my father's 22 death, subsequent to the probate of the will, 23 subsequent to the establishment of the trust 24 under the will, my brother, my sister and myself 25 had assets outside of the portfolio of stock,</p>

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<p>1 and we decided to form a second tenancy in 2 common, which we called Sage Associates, to 3 invest with Madoff in convertible bond 4 arbitrage, a convertible arbitrage. I sometimes 5 use the word bond. I think the more accurate 6 phrase, in my mind, is convertible arbitrage. 7 Q. And do you remember why you 8 decided to form a tenancy in common? 9 A. We wanted to invest with Madoff, 10 and we felt that the best form to invest with 11 Madoff was to do so jointly, as we were doing in 12 the trust, so we decided that a tenancy in 13 common made the most sense, that we'd each 14 contribute equal assets and we would be equal 15 pro rata tenants in common. 16 Q. Was there a particular reason that 17 you wanted to invest jointly instead of each 18 having singular accounts? 19 A. When your father dies when you're 20 in college and he dies unexpectedly and you have 21 a different family than you had and that you 22 expected, it brings you all closer together. We 23 were close to our mom, we were close to each 24 other. We had a -- we shared a lot of the same 25 visions. We were all embarking on what was then</p>	<p>1 line was that it was my responsibility to take 2 care of. 3 Q. Did they ever come to you with any 4 investment ideas for the Sage Associates 5 account? 6 A. We talked as siblings or friends 7 would talk, bat around ideas. In fact, I'm 8 recalling when we were purchasing stock back in 9 1985 and both my sister and my brother by that 10 time had children. My brother was living in 11 California near Disneyland. My sister thought 12 that the world revolved around taking your kids 13 to Disney World. They were enamored of that 14 company. It went a lot into why we decided to 15 invest in Disney. And we, in fact, invested in 16 Disney not only in Sage Associates but in Sage 17 Associates II as well. 18 We wanted a -- our goal was always 19 to have a diversified portfolio. It fit the 20 need. So that's an example of how we might have 21 interacted. But I'm sure it happened other 22 times over the years. That's one recollection 23 that I -- that I specifically remember. 24 Q. How did you verify that 25 Mr. Madoff's firm was carrying out your</p>
<p style="text-align: center;">Page 235</p> <p>1 a new life, and I think that togetherness was a 2 comforting feeling. 3 Q. So there wasn't a legal or 4 financial reason for doing a joint tenancy -- or 5 a tenancy in common instead of individual 6 accounts? 7 A. No. 8 Q. Over the life of Sage Associates, 9 how did you keep your brother and your sister 10 updated on what was going on in the accounts? 11 A. We were together a lot, as a 12 family. So either when we were together or 13 through phone calls. I was always available. 14 It was my responsibility to keep them up to date 15 at all times. I did so always. It was 16 something I feel good about. I did a good job 17 at it. 18 Q. Did they ever inquire with you 19 about the performance of Sage Associates? 20 A. We talked about it. I think -- 21 we're all different people. I think they felt 22 comfortable with me. I think they trusted me. 23 I think I earned their trust. I think at all 24 times I was available to them. So we talked 25 about it on occasion, but I think the bottom</p>	<p style="text-align: center;">Page 237</p> <p>1 directions? 2 A. The statements came in regularly. 3 The confirms and trade slips, whatever you want 4 to call them, came in regularly. It was no 5 different than the account we had at Evans & 6 Company in terms of the documentation we 7 received. It was as straightforward as anything 8 could be. 9 Q. Did you ever notice any 10 irregularities in your account statements? 11 A. I did not recognize any 12 irregularities in the account statements. 13 Q. Did you ever receive any actual 14 stock certificates? 15 A. We never received stock 16 certificates. 17 Q. Did you ever receive any DTCC 18 confirmations? 19 A. I don't know what a DTCC -- 20 Q. It's a Depository Trust -- 21 (Reporter clarification.) 22 MR. KRATENSTEIN: Let him finish 23 his answer. I think he was -- Mr. Sage, finish 24 your answer, and then counsel will ask her 25 question. You don't know what what is?</p>

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<p>1 Q. If Mr. Madoff testified that the 2 specialties of his trading were convertible 3 securities trading and split-strike conversion. 4 A. Would it surprise me if he said 5 that his specialties were split-strike and -- 6 did he say that? 7 Q. And split-strike conversion. 8 A. Or is this a hypothetical 9 question? 10 MR. KRATENSTEIN: I'm going to 11 object to the form of the question. 12 A. I'm not sure what I'm supposed to 13 answer. 14 Q. Okay. So, Mr. Madoff testified 15 last week that you and your family did not have 16 a particular strategy that was one of his 17 specialties, convertible securities -- 18 A. Again, you're using that word 19 specialty -- you're using that -- I'm sorry. 20 I'm sorry. Why don't we do this again. 21 Q. Sure. 22 Last week Mr. Madoff testified 23 that you and your family did not have a 24 particular strategy that was one of Madoff's 25 specialties, i.e., convertible securities</p>	<p>1 testimony. 2 Q. From last week? 3 A. From last week. 4 Q. Why were you invested with a 5 securities firm that did not follow your 6 particular strategy for investing? 7 MR. KRATENSTEIN: Object to the 8 form -- 9 A. I have -- 10 MR. KRATENSTEIN: Hang on. Object 11 to the form of the question. 12 A. I have no idea. Madoff was a 13 broker. We were a customer. We had -- we 14 invested the way we wanted to invest. Madoff 15 never said to us, I can't do what you want us to 16 do. 17 Q. Did you ever consider moving your 18 accounts to a different broker? 19 A. No. 20 MR. KRATENSTEIN: I assume you 21 mean before he was arrested? 22 MS. KERANEN: Before he was 23 arrested. 24 THE WITNESS: At least there's a 25 little bit of humor here.</p>
<p>1 trading or split-strike conversion. 2 A. Could I ask you to read what he 3 testified to as opposed to you paraphrasing what 4 he testified to? 5 Q. Sure. 6 "QUESTION: And so could you just 7 expand on that and explain how the Sages were 8 different than your discretionary customers. 9 "ANSWER: Well, they basically 10 didn't have a particular strategy that was one 11 of our specialties, which would have been 12 convertible securities trading or split-strike 13 conversion, which happened in the later years." 14 A. Okay. So he did use the word 15 "specialties." I thought you said he didn't and 16 that you were paraphrasing. 17 Q. Oh, I misunderstood what you meant 18 by quotation marks then. 19 A. Sorry. Okay, now that we've 20 cleared that up. 21 MR. KRATENSTEIN: What's the 22 question? 23 Q. Now that -- were you previously 24 aware of that testimony? 25 A. I read Madoff's deposition</p>	<p>1 MS. KERANEN: I think if we can 2 take just five minutes and I'll formulate my 3 last questions. 4 MR. KRATENSTEIN: Sure. 5 THE VIDEOGRAPHER: The time is 6 6:52 p.m. Off the record. 7 (Recess taken.) 8 THE VIDEOGRAPHER: The time is 9 6:58 p.m. Back on the record. 10 MS. KERANEN: Thank you, Mr. Sage, 11 I have no more questions. 12 THE WITNESS: Oh, thank you. 13 MR. KRATENSTEIN: I think I have a 14 few questions, so we're going to stick around. 15 THE WITNESS: Surprise, surprise. 16 - - - 17 EXAMINATION BY MR. KRATENSTEIN: 18 Q. Before I get into some of these 19 letters that we've seen, I just wanted to 20 clarify some prior testimony you gave about 21 checking prices. 22 A. Okay. 23 Q. Do you just want to explain 24 clearly just so there's no confusion about what 25 your practice was with respect to checking the</p>

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<p>1 prices of stocks in your portfolio.</p> <p>2 A. I saw my job as the manager of the</p> <p>3 tenancies in common to track the stocks, to</p> <p>4 understand what our positions were, to at all</p> <p>5 times feel that if I was asked a question that I</p> <p>6 could respond appropriately and clearly. I had</p> <p>7 a responsibility to my brother and sister to</p> <p>8 manage that account properly, and that entailed</p> <p>9 my tracking the stocks frequently.</p> <p>10 If I recall, Madoff did not list</p> <p>11 stock prices on the statements for many of the</p> <p>12 earlier years. I believe that changed at some</p> <p>13 point in time, where at the bottom of the</p> <p>14 statement he listed the monthly price. I could</p> <p>15 be wrong on this, but that's my recollection.</p> <p>16 So if that is correct, then I</p> <p>17 would have checked during those periods the</p> <p>18 monthly end price of the stock. But it never</p> <p>19 would have dawned on me that Madoff might not</p> <p>20 accurately reflect the correct price of the</p> <p>21 stock. I truly never saw any variances in all</p> <p>22 of the years that I tracked the stocks.</p> <p>23 Q. So when you received statements or</p> <p>24 confirms that reflected prices of stocks for</p> <p>25 transactions, stock transactions in your</p>	<p>1 and the confirmations received for all of these</p> <p>2 transactions.</p> <p>3 Q. Would those be statements and</p> <p>4 confirmations that you produced in this</p> <p>5 litigation?</p> <p>6 A. They would be.</p> <p>7 Q. I'm not going to go through them</p> <p>8 all with you now; they speak for themselves, but</p> <p>9 they're all verifiable.</p> <p>10 MS. KERANEN: Objection.</p> <p>11 MR. KRATENSTEIN: Well, I'll say</p> <p>12 that what's on the statements and confirms, what</p> <p>13 they say is verifiable --</p> <p>14 MS. KERANEN: Objection.</p> <p>15 MR. KRATENSTEIN: -- that they</p> <p>16 speak for themselves.</p> <p>17 Q. Let's now look at what was marked</p> <p>18 earlier today as Exhibit 1.</p> <p>19 A. Okay.</p> <p>20 Q. Do you recall being shown that</p> <p>21 document earlier today?</p> <p>22 A. I do recall that.</p> <p>23 Q. And do you see in this document</p> <p>24 you are directing Mr. Madoff to execute two</p> <p>25 transactions in the Sage Associates account with</p>
<p style="text-align: center;">Page 319</p> <p>1 account, would you go run off and check the</p> <p>2 newspaper to see if the statement or confirm was</p> <p>3 right?</p> <p>4 A. No.</p> <p>5 Q. Is it fair to say that you would</p> <p>6 generally check stock prices to see how the</p> <p>7 portfolio was doing in the market?</p> <p>8 A. That is correct.</p> <p>9 Q. I'm going to put back in front of</p> <p>10 you what was marked today as Trustee Exhibit 19.</p> <p>11 A. Thank you.</p> <p>12 Q. And do you see that in this</p> <p>13 document you are directing Mr. Madoff to execute</p> <p>14 six transactions in the Sage Associates account</p> <p>15 and two transactions in the Sage Associates II</p> <p>16 account?</p> <p>17 A. I do see that.</p> <p>18 Q. And then you asked to make a</p> <p>19 withdrawal?</p> <p>20 A. I do see that, too.</p> <p>21 Q. And did -- to your knowledge, did</p> <p>22 these transactions get executed as you directed?</p> <p>23 A. To my knowledge, they did.</p> <p>24 Q. What's that based on?</p> <p>25 A. That is based on the statements</p>	<p style="text-align: center;">Page 321</p> <p>1 respect to Emulex, E-m-u-l-e-x, and Broadcom; do</p> <p>2 you see that?</p> <p>3 A. Yes.</p> <p>4 Q. And you also make a direction with</p> <p>5 respect to a withdrawal from the Maurice S. Sage</p> <p>6 Foundation; do you see that?</p> <p>7 A. I see those.</p> <p>8 Q. And did you believe at the time</p> <p>9 that these trades were actually executed?</p> <p>10 A. I did.</p> <p>11 Q. And that your instructions were</p> <p>12 followed?</p> <p>13 A. They were.</p> <p>14 Q. On what do you base that?</p> <p>15 A. I base that on receiving the</p> <p>16 confirmations and the statements and with regard</p> <p>17 to the check, receiving the check.</p> <p>18 Q. The 25,000-dollar check.</p> <p>19 A. That's correct.</p> <p>20 Q. You can put that aside.</p> <p>21 Putting back in front of you what</p> <p>22 was previously marked as Exhibit 26. Do you</p> <p>23 recall seeing that document earlier in this</p> <p>24 deposition?</p> <p>25 A. Yes, I do.</p>

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<p>1 Q. And you talked about constructive 2 sales and grandfathering. Do you recall those 3 questions and answers?</p> <p>4 A. I do recall them.</p> <p>5 Q. Do you see that you ask in this 6 letter Mr. Madoff to buy back into Broadcom in 7 the Sage Associates account and RJR in the Sage 8 Associates and Sage Associates II account prior 9 to January 30th? Do you see that?</p> <p>10 A. I do see that.</p> <p>11 Q. And I believe you testified, 12 correct me if I'm wrong, that seeing the 13 statements and confirms may help you pinpoint 14 when this letter was written. Do you recall 15 that?</p> <p>16 A. I do.</p> <p>17 Q. So let me just help you with that. 18 First of all, to your knowledge, by the way, did 19 Mr. Madoff buy back into Broadcom and RJR as you 20 instructed in this letter prior to January 30th?</p> <p>21 A. That is my recollection.</p> <p>22 Q. I'm going to show you what was 23 previously marked at Mr. Madoff's deposition as 24 Exhibit 30. It's two-sided.</p> <p>25 A. Okay.</p>	<p>1 MS. KERANEN: You can mark it as 2 defense exhibits.</p> <p>3 MR. KRATENSTEIN: Okay, 1?</p> <p>4 MS. KERANEN: Yeah. I mean, you 5 haven't marked any previous defense exhibits, 6 have you?</p> <p>7 MR. KRATENSTEIN: Not -- no. 8 These are not -- at the Madoff deposition they 9 were not called defense exhibits. So we can 10 call it Defense Exhibit 1.</p> <p>11 (Exhibit D-1 marked for 12 identification.)</p> <p>13 MR. KRATENSTEIN: Mark this as 14 D-2.</p> <p>15 (Exhibit D-2 marked for 16 identification.)</p> <p>17 MR. KRATENSTEIN: Mark this as 18 D-3, please.</p> <p>19 (Exhibit D-3 marked for 20 identification.)</p> <p>21 MR. KRATENSTEIN: Just for the 22 record, since these are new exhibits, D-1 bears 23 Bates No. SAGE004503; D-2 bears Bates No. 24 SAGE0006859 through 64; D-3 bears Bates No. 25 SAGE0008381 through 8382.</p>
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<p>1 MS. KERANEN: Thank you.</p> <p>2 MR. KRATENSTEIN: You're welcome.</p> <p>3 MS. KERANEN: This was marked as 4 Exhibit 30?</p> <p>5 MR. KRATENSTEIN: Yes, at 6 Mr. Madoff's deposition.</p> <p>7 MS. KERANEN: Because it looks 8 like 70.</p> <p>9 MR. KRATENSTEIN: Oh, I apologize. 10 Let me check. It was Exhibit 70. Thank you for 11 correcting me. It happens to be near tab 30 in 12 my binder. It was Exhibit 70, correct. Thank 13 you.</p> <p>14 Q. While you're looking at that, let 15 me also show you what was marked as Exhibit 71 16 at Mr. Madoff's deposition.</p> <p>17 MS. KERANEN: Thank you.</p> <p>18 MR. KRATENSTEIN: You're welcome. 19 And I'm going to ask the court reporter to just 20 mark a few documents that were not marked in 21 Mr. Madoff's deposition.</p> <p>22 Counsel, how do you want to handle 23 this because the prior exhibits were marked 24 Trustee 1 through whatever. Because I'm marking 25 this, how do you want to change it?</p>	<p>1 BY MR. KRATENSTEIN: 2 Q. Mr. Sage, do you recognize the 3 documents I've put in front of you?</p> <p>4 A. I recognize the documents.</p> <p>5 Q. Can you just tell us what they 6 are.</p> <p>7 A. There is a January --</p> <p>8 Q. Tell us by exhibit number.</p> <p>9 A. Exhibit No. D-2 is a January 31st, 10 2003 Sage Associates II statement with Madoff. 11 Exhibit D-1 is a confirmation 12 trade date 1/8/03 on Reynolds.</p> <p>13 Q. RJR?</p> <p>14 A. Yes, RJR, R.J. Reynolds, showing 15 that Madoff followed our instructions according 16 to the letter that I sent, which I can now 17 identify as having been sent in December of 18 2002. That would be the Trustee's Exhibit 19 No. 26.</p> <p>20 Let me just also add that Exhibit 21 D-1 is the confirm on Sage Associates R.J. 22 Reynolds; and the Exhibit D-3 is the confirm on 23 Sage Associates II R.J. Reynolds.</p> <p>24 All of these documents combined, 25 the confirms and the statement show that my</p>

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<p>1 instructions were followed in the letter that 2 I've now identified as having been sent in 3 December of 2002 with regard to the stocks that 4 were grandfathered and needed to be opened up 5 prior to January 31st of 2003.</p> <p>6 Q. And those stocks were Broadcom and 7 RJR?</p> <p>8 A. That is correct.</p> <p>9 Q. Thank you. You can put those 10 documents aside.</p> <p>11 I don't think that you were shown 12 this letter earlier in this deposition, but it 13 was marked at Mr. Madoff's deposition as 14 Exhibit 73.</p> <p>15 A. Okay.</p> <p>16 Q. Do you recognize this document?</p> <p>17 A. I do recognize that document.</p> <p>18 Q. What is it?</p> <p>19 A. It is a document, letter that I 20 sent on behalf of the two stock account 21 tenancies in common, Sage Associates and Sage 22 Associates II, and the Maurice S. Sage 23 Foundation to Madoff with the attention to 24 Annette Bongiorno.</p> <p>25 Q. And you write to Ms. Bongiorno --</p>	<p>1 in that account. Do you see that?</p> <p>2 A. I see that.</p> <p>3 Q. And with respect to the Maurice S. 4 Sage Foundation, you asked to withdraw a sum of 5 \$16,000. Do you see that?</p> <p>6 A. I see that.</p> <p>7 Q. And you say, "This will not 8 require the sale of any stock because this sum 9 is available in money market funds." Do you see 10 that?</p> <p>11 A. I see that line.</p> <p>12 Q. Do you believe that these trades 13 were executed?</p> <p>14 A. I do believe the trades were 15 executed.</p> <p>16 Q. Why?</p> <p>17 A. They appeared in the statements, 18 and we received confirmation of the same in 19 trade slips, confirmations from Madoff's firm.</p> <p>20 Q. Do you see the notes in the 21 left-hand margin, the handwritten notes?</p> <p>22 A. I do.</p> <p>23 Q. Are those your notes?</p> <p>24 A. They are my notes -- no, they are 25 not my notes.</p>
<p style="text-align: center;">Page 327</p> <p>1 well, strike that. Step back. 2 The fax line, which says 1/29/92, 3 is that date correct?</p> <p>4 A. That date would not be correct.</p> <p>5 Q. And that's for the reasons you've 6 previously stated about why the fax lines on 7 your letters were not correct?</p> <p>8 A. I never set my fax machines.</p> <p>9 Q. You never set the date?</p> <p>10 A. I never set the date on my fax 11 machine.</p> <p>12 Q. You state in your letter, quote, 13 "After discussions with Paul, we have come up 14 with the following plan with regards to the Sage 15 Associates, Sage Associates II and Maurice S. 16 Sage Foundation Inc. accounts." Do you see 17 that?</p> <p>18 A. I do.</p> <p>19 Q. And then you give instructions as 20 to Sage Associates with respect to Amgen, 21 Symantec, Reynolds and National Semiconductor. 22 Do you see that?</p> <p>23 A. I do see that.</p> <p>24 Q. For Sage Associates II you give a 25 direction with respect to the Symantec position</p>	<p style="text-align: center;">Page 329</p> <p>1 Q. Okay. Do you -- can you read them 2 out loud, please, if you can understand them, 3 the writing.</p> <p>4 A. "Plus additional 3 million-dollar 5 gain if possible, no long-term gain" -- "no long 6 term."</p> <p>7 Q. Do you know, first of all, what 8 those notes mean? Do you have an understanding 9 of what they mean?</p> <p>10 A. That I wanted to take \$3 million 11 in gains on the -- in the account but not 12 long-term gains.</p> <p>13 Q. Did you give that instruction to 14 Ms. Bongiorno, the addressee of this letter?</p> <p>15 A. I did.</p> <p>16 Q. Why did you want to -- why did you 17 give her that instruction?</p> <p>18 A. It was always my goal to lower the 19 margin debt. The Amgen, Symantec, Reynolds and 20 National Semiconductor positions were held short 21 against the box. They were short-term 22 positions. They were shorted before the stocks 23 were held for a year. I believe that it made 24 sense to reduce the margin debt in that way. 25 We also had incurred significant</p>

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<p>1 margin interest. I wanted to be able to write 2 off the margin interest, although margin 3 interest could be carried forward to a 4 subsequent year. Given that I could reduce the 5 debt and write off the margin interest, it 6 seemed to me like a logical move to make at that 7 time.</p> <p>8 I believe that there were 9 significant losses in this year that we 10 incurred. I did not -- they were, to the best 11 of my recollection, not -- they were losses that 12 I did not want to offset with long-term gains. 13 It would have negated the value of my long-term 14 gains to offset the short-term losses with those 15 long-term gains.</p> <p>16 So, I instructed to take these 17 gains but not to take long-term gains.</p> <p>18 Q. To your knowledge were your 19 instructions followed?</p> <p>20 A. To my knowledge these positions 21 that I outlined were followed and no long-term 22 gains were recognized.</p> <p>23 Q. Do you know when you wrote this 24 letter?</p> <p>25 A. It would appear to me to be in</p>	<p>1 the box account.</p> <p>2 Q. In Sage Associates?</p> <p>3 A. In Sage Associates II. The 4 Exhibit No. 80 is the 3 account, the long 5 positions in Sage Associates II. I see the -- 6 that we delivered the short position in the 7 7 account against the long position in the 3 8 account as I instructed.</p> <p>9 Q. What are the date of those 10 statements?</p> <p>11 A. The date of those statements are 12 December of 2003.</p> <p>13 Q. And the last instruction in the 14 letter that we put in front of you, which was 15 marked at Mr. Madoff's deposition as Exhibit 73 16 talks about at the end a withdrawal of \$16,000 17 from the Maurice S. Sage Foundation account. Do 18 you see that?</p> <p>19 A. I do see that.</p> <p>20 Q. And putting in front of you what 21 was marked at Mr. Madoff's deposition as 22 Exhibit 83, and I'll ask if you recognize that 23 document?</p> <p>24 A. I do recognize that document.</p> <p>25 Q. What is it?</p>
<p>1 December prior to Christmas, and the year I 2 would be able to identify better if I could see 3 the statements and the confirms.</p> <p>4 Q. All right. Well I'll show you the 5 statements. I don't know if we'll need to go to 6 the confirms. But showing you what was 7 previously marked at Mr. Madoff's deposition as 8 Exhibit 74 and Exhibit 75.</p> <p>9 A. So this letter would have been 10 sent in 2002.</p> <p>11 Q. Are you sure? Look at the date.</p> <p>12 A. I'm sorry. The letter would have 13 been sent in 2003. These are the statements 14 that show that -- I see that Amgen and Symantec 15 and Reynolds and National Semiconductor were all 16 traded as I instructed.</p> <p>17 Q. Let's look at -- that's in the 18 Sage Associates account?</p> <p>19 A. That is in Sage Associates.</p> <p>20 Q. Now I'll show you the Sage 21 Associates II statement. Showing you what was 22 previously marked as Exhibit 80 at Mr. Madoff's 23 deposition and Exhibit 81.</p> <p>24 A. So Exhibit 81 is the December 25 statement on the 7 account, the short against</p>	<p>1 A. It is a memorandum for a check 2 received on the Maurice S. Sage Foundation dated 3 12/24/2003, in the amount of \$16,000 as I 4 instructed in my letter.</p> <p>5 Q. Thank you. You can put those 6 documents aside.</p> <p>7 I show you what was previously 8 marked as Exhibit 84 at Mr. Madoff's deposition.</p> <p>9 A. Okay.</p> <p>10 Q. You see that the Bates number of 11 this document is not a Sage Bates number? Do 12 you see that?</p> <p>13 A. I do see that.</p> <p>14 Q. And do you see that these are -- 15 the handwriting starts "year end notes." Do you 16 see that?</p> <p>17 A. I see that.</p> <p>18 Q. Do you see a reference in the 19 notes to Sage group?</p> <p>20 A. I see that.</p> <p>21 Q. And then do you see the note that 22 says, "Could have gone SAB on eBay but cust did 23 not want it"? Do you see that?</p> <p>24 A. I do see that.</p> <p>25 Q. Do you have any idea what that</p>

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<p>1 refers to?</p> <p>2 A. I believe in the previous letter</p> <p>3 when I was suggesting that we would like not to</p> <p>4 take any long-term gains, we had a long-term</p> <p>5 gain in eBay at the time, so when I was asked if</p> <p>6 we should go short against the box on eBay, I</p> <p>7 didn't want that. We could have gone short</p> <p>8 against the box in eBay and not opened it up</p> <p>9 prior to January 31st of the subsequent year and</p> <p>10 recognized the gain, as a constructive sale.</p> <p>11 But that would have defeated the purpose of what</p> <p>12 I wanted to do.</p> <p>13 Q. And you were shown Exhibit 24</p> <p>14 before, and we had talked about the fact that</p> <p>15 there were some notes missing on that. So let</p> <p>16 me just get for you what was marked as</p> <p>17 Exhibit 88 at Mr. Madoff's deposition, which is</p> <p>18 a -- we double-sided it --</p> <p>19 A. Okay.</p> <p>20 Q. -- but I'll put that in front of</p> <p>21 you as well.</p> <p>22 So, Mr. Sage, do you see that this</p> <p>23 version of the document has the additional notes</p> <p>24 that we were referring to earlier that were</p> <p>25 missing from Exhibit 24? Do you see that?</p>	<p>1 A. This was that period I was trying</p> <p>2 to explain before in 2006 where we -- we just</p> <p>3 were indecisive -- I was indecisive about what I</p> <p>4 wanted to do with our stock portfolio. And I</p> <p>5 guess I sent Madoff two letters and -- I had</p> <p>6 sent Madoff two letters about that, and</p> <p>7 obviously we had spoken about this as earlier as</p> <p>8 2005. And because I had sent those letters,</p> <p>9 Bongiorno must have called me back to say, what</p> <p>10 do you want to do, because I had clearly</p> <p>11 indicated that we were going to sell off the</p> <p>12 portfolio.</p> <p>13 But as the months went by, as I</p> <p>14 said earlier, I decided I really wanted to</p> <p>15 realize the gains in 2007. So I just waited as</p> <p>16 long as I could. I don't know that I ever</p> <p>17 called back by Tuesday 8/29. Probably by that</p> <p>18 time I had made a decision to see if we could</p> <p>19 get to January 1st of 2007.</p> <p>20 In fact, that is what we wound up</p> <p>21 doing. And, you know, I guess all of this</p> <p>22 letter writing was me thinking I wanted to sell</p> <p>23 the stocks. As I mentioned, we were paying the</p> <p>24 estimated taxes, but at the end of the day, I</p> <p>25 didn't pull that trigger.</p>
<p style="text-align: center;">Page 335</p> <p>1 A. I see that.</p> <p>2 Q. And can you read out loud the</p> <p>3 notes that are on the second page of the</p> <p>4 document.</p> <p>5 A. "I called Malcolm Sage and of</p> <p>6 June."</p> <p>7 Q. Is it and or end?</p> <p>8 A. "End of June to say the accounts</p> <p>9 were as close to ever and should" -- "even and</p> <p>10 should we do the transfers. He said he would</p> <p>11 talk to Paul, call back. Called again end of</p> <p>12 July. He said he didn't get a chance to get</p> <p>13 talk" -- "to yet talk Paul and he will call me</p> <p>14 back. Called again 8/23/06. He said the" --</p> <p>15 premises?</p> <p>16 Q. Promises.</p> <p>17 A. -- "promises to call me" -- oh.</p> <p>18 "And he said he promises to call me back by</p> <p>19 Tuesday 8/29."</p> <p>20 Q. Does reading these notes refresh</p> <p>21 your recollection of conversations you had with</p> <p>22 Ms. Bongiorno in or around June through August</p> <p>23 of 2006?</p> <p>24 A. It does.</p> <p>25 Q. What was this about?</p>	<p style="text-align: center;">Page 337</p> <p>1 Q. That was your trigger to pull?</p> <p>2 A. That was my trigger to pull.</p> <p>3 Q. Did you understand -- you</p> <p>4 mentioned that you understand these notes to be</p> <p>5 Ms. Bongiorno awaiting your instructions; is</p> <p>6 that correct?</p> <p>7 A. It would appear that way. I don't</p> <p>8 know her handwriting but --</p> <p>9 Q. Was that consistent with your</p> <p>10 recollection?</p> <p>11 A. It's consistent with my</p> <p>12 recollection.</p> <p>13 Q. Thank you. A few more questions.</p> <p>14 You testified earlier about the</p> <p>15 decision to buy Disney. Do you remember that?</p> <p>16 A. I do recall that.</p> <p>17 Q. And just to refresh us, when was</p> <p>18 Disney purchased?</p> <p>19 A. My recollection that it was -- is</p> <p>20 that it was purchased in the spring of 1985.</p> <p>21 Q. Were other stocks purchased at</p> <p>22 that time?</p> <p>23 A. At the time we purchased Disney,</p> <p>24 Disney was bought both in Sage Associates and</p> <p>25 in -- and in the Maurice Sage Trust because we</p>

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<p>1 didn't transfer the trust assets to Sage 2 Associates II until 1986, approximately in June. 3 So we bought Disney in those two 4 accounts at the same time that we bought Disney 5 in Sage Associates. My recollection is that in 6 Sage Associates we bought Merrill and Upjohn and 7 that in Sage Associates II we bought Disney, 8 Anheuser, Boise, American Express, and I believe 9 we bought Merrill in that account as well. 10 Q. So those stocks you instructed 11 Mr. Madoff to purchase in 1985? 12 A. That's my recollection. 13 Q. How long were those stocks held, 14 to your recollection? 15 A. With the exception of Upjohn, 16 which merged with Pharmacia, and became at first 17 Pharmacia Upjohn, then became Pharmacia and then 18 merged with Pfizer, and we sold that stock, my 19 recollection is in 2005, I believe or 2006, but 20 all of the other stocks were held till 2007 in 21 January when I instructed Madoff to sell off all 22 of those positions. 23 Q. So you held those -- that stock 24 portfolio in those two accounts with the one 25 exception you mentioned all the way from 1985</p>	<p>1 A. Do I have evidence that the trades 2 that he executed and listed on our statements 3 and the confirms, that they did not happen? Do 4 I have evidence of that? 5 Q. No, no, that's not what I asked. 6 A. Oh, no -- 7 Q. Can you read back my question, 8 please. 9 (Last question read.) 10 A. Maybe I'm getting tired. How did 11 that differ from what I said? Can you ask the 12 question again? 13 Q. Sure. So you have testified that 14 you know that your directions were followed 15 because of the account statements and the trade 16 confirmations sent to you by Madoff. 17 A. That's correct. 18 Q. Do you have any evidence that was 19 not sent to you by Madoff that those trades 20 actually occurred? 21 A. Evidence that was not sent to me 22 by Madoff? No. 23 MS. KERANEN: I have no further 24 questions. 25 - - -</p>
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<p>1 until 2007? 2 A. That is correct. 3 Q. Why did you do that? 4 A. It was -- no one ever knows when 5 one starts on a road as to where that road will 6 lead. Certainly not in the market. But that 7 was our -- our objective was to grow a portfolio 8 of stocks and to hold them for as long as 9 possible and grow a nest egg that we could make 10 certain that we provided for ourselves and our 11 families as time went by. 12 Q. And by January 2007 did you 13 believe you had accomplished that goal? 14 A. I do believe that we had 15 accomplished that goal. 16 MR. KRATENSTEIN: I have no 17 further questions. 18 MS. KERANEN: I have one question 19 for you, Mr. Sage. 20 - - - 21 CONTINUED EXAMINATION BY MS. KERANEN: 22 Q. As you sit here today, do you have 23 any evidence that was not generated by Madoff 24 that the trades that you directed actually 25 occurred?</p>	<p>1 CONTINUED EXAMINATION BY MR. KRATENSTEIN: 2 Q. Do you believe that your trades 3 were executed? 4 A. I do believe my trades were 5 executed. 6 Q. And that's based on what? 7 A. Based on the confirms and the 8 statements. 9 MR. KRATENSTEIN: Thank you. 10 THE VIDEOGRAPHER: The time is 11 7:33 p.m. This concludes the deposition. Off 12 the record. 13 (Deposition concluded.) 14 -00-</p>